

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Misc. Petition No. 01 of 2020

Secretary, Ministry of Law and Justice

Vs

Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
------------------------------	----------------------------	---

- 02) 03-09-2020. Mr Khalid Javed Khan, Attorney General for Pakistan.
Mr Tariq Mehmood Khokhar, Additional Attorney General.
Syed Muhammad Tayyab, Deputy Attorney General.
Mr Arshid Mehmood Kiani, Deputy Attorney General.
Mr Saqlain Haider, Assistant Attorney General.
Mr Muhammad Nadeem Khan Khakwani, Assistant Attorney General.
Mr Ahmed Irfan Aslam, Consultant to Attorney General.
Mr Hamid Khan, Senior ASC (Amicus Curiae).

ATHAR MINALLAH, CJ.- In response to our query regarding directions given vide order, dated 03.08.2020, *Mr Khalid Javed Khan*, the learned Attorney General, has informed that the officials had met Commander Kulbushan Sudhir Jadhav (*hereinafter referred to as "Commander Jadhav"*) in compliance with the direction given in paragraph 7(i) of the aforementioned order and he was given a detailed briefing, particularly regarding his right to avail the statutory remedy provided under the International Court of Justice (Review and

Reconsideration) Ordinance, 2020 (*hereinafter referred to as the "Ordinance of 2020"*). He was also informed regarding the judgment of the International Court of Justice (*hereinafter referred to as the "International Court"*) and his rights under Article 36 of the Vienna Convention on Consular Relations (*hereinafter referred to as the "Convention"*). According to the learned Attorney General, he has been informed by the officials of the Government of Pakistan that Commander Jadhav has reiterated his earlier stance and has preferred to pursue the remedy of clemency instead of invoking his right under the Ordinance of 2020. The learned Attorney General has further informed us that the Government of the Republic of India (*hereinafter referred to as the "Government of India"*) was duly informed regarding the proceedings of this Court held on 03-08-2020, but the latter's response is awaited. We enquired from the Registrar of this Court whether an enrolled counsel had filed a power of attorney on behalf of the Government of India and the response was in the negative.

2. It is noted that the Government of Pakistan, in order to meet its obligations regarding giving effect to the judgment of the International Court, pronounced on July 17, 2019, has specifically promulgated the Ordinance of 2020. The proceedings before us are aimed at ensuring that the judgment of the International Court is given effect. We

are mindful of the emphasis laid down by the International Court, in its judgment, relating to the need for the review and reconsideration to be effective. We are of the opinion that these proceedings and judicial review, on the basis of the judgment of the International Court, may not be meaningful and effective if Commander Jadhav and the Government of India decide not to exercise the course of action highlighted in the judgment of the International Court.

3. In the case in hand, protecting the right to a fair trial of Commander Jadhav is of paramount importance to ensure that the review and reconsideration is not only effective but is also seen to be such. We have no reason to doubt, as stated by the learned Attorney General, that the officials of the Government of Pakistan have complied with our direction by informing Commander Jadhav regarding his right to a fair trial and his rights under Article 36 of the Convention. It is unquestionable that the right to a fair trial is the foundation of the rule of law and our criminal justice system. The essence of fair trial is to assure to every party that he or she would be treated fairly and justly by a judicial forum, which is impartial and independent. In the case in hand, Commander Jadhav is the most crucial stakeholder followed by the Government of India. Subject to further assistance, we are, prima facie, of the opinion that the judgment of the International Court does not contemplate

proceedings for review and reconsideration if Commander Jadhav and / or the Government of India are not inclined or willing to avail the remedy specifically provided through the enactment of the Ordinance of 2020. It appears to us that the effectiveness of these proceedings are dependent on the willingness of Commander Jadhav and the Government of India to avail the statutory remedy provided under the Ordinance of 2020. If both choose to distance themselves from these proceedings, then questions would arise regarding the validity of the petition filed by the Government of Pakistan under the Ordinance of 2020 and the status of compliance with the judgment of the International Court. The choice of means was left to be decided by the Government of Pakistan and the latter, in compliance, has enacted the Ordinance of 2020. The obligation of the Government of Pakistan, prima-facie, appears to be confined to "providing" effective review and reconsideration. What if Commander Jadhav, exercising free will, or the Government of India decide not to pursue the statutory remedy provided for review and reconsideration? What then would be the status of compliance with the judgment of the International Court?

4. In order to remove any doubt, and to fulfill the requirements of a fair trial, we feel that another opportunity ought to be extended to the Government of India to consider taking appropriate measures so as to ensure

effective compliance with the judgment of the International Court. It is also important to give an assurance to Commander Jadhav that his rights, particularly the right to a fair trial, is an integral factor of an effective review and reconsideration for a meaningful compliance with the judgment of the International Court. We, therefore, yet again restrain ourselves from proceeding in the matter in hand.

5. To ensure effective review and reconsideration so as to give effect to the judgment of the International Court, we direct as follows.-

- (a) The learned Attorney General shall ensure that copy of this order is provided to Commander Jadhav.
- (b) The Government of Pakistan shall once again convey the orders passed in this petition to the Government of India to enable the latter to consider taking appropriate measures in order to ensure compliance with the judgment of the International Court.
- (c) The Registrar of this Court shall send to the learned amici curiae, appointed vide our last order, copies of the petition and documents placed on the record. They are expected to assist us on the status of compliance with the

judgment of the International Court in the event that Commander Jadhav or the Government of India decide against availing the remedy provided under the Ordinance of 2020.

6. The Registrar of this Court is directed to fix the proceedings at 02:00 p.m. on 06.10.2020.

(CHIEF JUSTICE)

(AAMER FAROOQ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE